

## Connery, Shannon

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**From:** Jeffrey Lockwood - NOAA Federal <jeffrey.lockwood@noaa.gov>  
**Sent:** Wednesday, June 18, 2014 4:51 PM  
**To:** Palmer, John; SEEDS Joshua; Henning, Alan; Wu, Jennifer  
**Cc:** Kim Kratz - NOAA Federal  
**Subject:** Draft BOF presentation - comments by Thursday noon please  
**Attachments:** NOAA PCW Presentation.pptx

Any concerns or suggestions?

Sorry for the short turnaround - I thought I sent this out earlier today.

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WEST COAST  
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# PCW and ESA-Listed Species



June 23, 2014

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## Summary

- NOAA Fisheries supports the preliminary results of ODF's rules analysis on riparian buffers for small and medium fish-bearing streams.
- We support ODF in emphasizing published and peer-reviewed scientific data in its analysis.
- The PCW criterion will help maintain and restore salmon habitat by contributing to thermal diversity on the landscape, providing cold-water refugia, and supporting attainment of water temperature criteria in downstream reaches.
- We are consulting for a second time under the ESA with U.S. EPA on its approval of the 2003 Oregon water temperature standard due to successful litigation, and it is challenging enough without weakening the standard.



# The Temperate Standard and ESA-Listed Species



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## Temperature Standard and ESA-Listed Species

- NOAA helped develop the 2003 Temperature Guidance, and agrees with the prior testimony by EPA about its technical and legal bases.
- We have not seen any new information regarding thermal tolerances of salmonid fish that disagrees in any substantive way with the Guidance.
- We also agree with EPA's prior testimony on the scientific and legal reasons why the PCW criterion is an important part of Oregon's temperature standard.



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## Temperature Standard and ESA-Listed Species

- Water temperature is listed in state and federal ESA recovery plans for salmon, steelhead, and eulachon throughout western Oregon as a primary or secondary factor limiting recovery of the species.
- Recovery plans do not seek to return to pre-development conditions, but to restore adequate habitat functions to recover the species.
- This will include restoring a diversity of thermal features on the landscape that are accessible to salmon at the times of year that they need them. When lower reaches warm, salmon need cold tributaries to safely hold and rear.



# PCW and ESA Consultation



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## PCW and ESA Consultation

- In the 2004 ESA consultation, NOAA identified several problems to consider in the current consultation, including:
  - The extent of the designation for the “core cold water” salmonid rearing criterion in southern Oregon, which is colder than the “regular” rearing criterion, and
  - Availability of cold-water refugia that helped make the salmonid “migration only” criterion in the lower Willamette River and some other rivers sufficiently protective.





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## PCW and ESA Consultation

- In the ruling that compelled the new ESA consultation on Oregon's temperature standard, the court reached several conclusions relevant to PCW:
  - For species with short life cycles, such as salmon, NOAA must consider whether significant negative impacts or habitat loss for a short period could weaken or destroy the species.
  - NOAA must make its jeopardy analysis on the biological needs of the ESA-listed fish in the context of environmental baseline conditions, and not justify its conclusions based on the fact that attainment of the standard would be an improvement over current temperatures.



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# PCW and ESA Consultation

- Would site-specific approaches to protecting cold water without approval by EPA work?
  - The court found that in its 2004 consultation document, NOAA identified impacts of future non-federal activities but did not analyze them, and that this was arbitrary and capricious.
  - The court ordered NOAA to analyze how the water quality standard would affect the species in combination with effects of non-federal activities.
  - Inserting any kind of process into the temperature standard that increased the risk of temperature increases on non-federal lands would increase cumulative impacts and complicate the ESA consultation.



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## PCW and ESA Consultation

- There is always uncertainty in environmental regulations, but ESA case law compels NOAA to be biologically conservative and always give the benefit of the doubt to the listed species.





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# PCW and ESA-Listed Species



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